IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 28 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

M/S.BHOJRAJ SURENDRAPAL

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Appearance:

1. INCOME TAX REFERENCE No. 28 of 1991
MR BB NAYAK FOR MR MANISH R BHATT for Applicant.
NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appeallate Tribunal, Ahmedabad Bench "B" has referred the following two questions under section 256(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the opinion of this Court:

1 "Whether, the interest paid to the H.U.F.account is not disallowable u/s.40(b) of the I.T.Act,1961?

2 Whether, in view of the recent full bench decision of the Gujarat High Court in the case of C.Chhotalal & Co.(150 I.T.R.276) the Tribunal was right in law in granting the allowance of interest paid to the H.U.F.account which was a partner in the assessee firm ?"

2 The assessee is a partnership firm . For assessment year 1981-82 the relevant accounting period is year ended 31/3/1981. The assessee paid interest of Rs.50,619/- and claimed the same as allocable deduction in light of the decision of this Court in case of Sajjanraj Divanchand, 125 ITR 654. The I.T.O. negatived the claim and hence the assessee preferred an appeal before the C.I.T.(Appeal). The C.I.T.(Appeal) following the decision in case of Sajjanraj Divanchand (Supra) allowed the appeal and against the said order revenue preferred an appeal before the Tribunal. The Tribunal upheld the order of C.I.T.(Appeal).

3 We have heard Mr.B.B.Nayak, learned Counsel for the applicant-revenue. Though served, none appears on behalf of the assessee.

4 The decision of this Court in case of Sajjanraj Divanchand (Supra) has been held to be no longer good law by the Full Bench of this Court in case of C.Chhotalal & Co., 150 ITR 276, therefore, the reasoning which appeals the C.I.T. (Appeal) and Tribunal is no longer available.

5 Further more, the issue now stands concluded by the decision of the Apex Court in the cases of Brij Mohan Das Laxman Das vs. C.I.T., 223 ITR 825, Suwalal Anandilal Jain vs. C.I.T., 224 ITR 753 and C.I.T. vs. Kanji Shivji, 242 ITR 124. In all the three decisions it has been held that the interest paid to a person in any capacity other than that of a partner is not hit by provision of Section 40B of the Act. As the facts of the present case show that the interest was paid to the H.U.F. in a separate account while the profits were credited in a separate account and maintenance of separate accounts in relation to the same entity would make no difference. Applying the ratio of the aforesaid decision of the Apex Court we hold that the Tribunal was in error in holding that the interest paid to the account of H.U.F was not disallowable under section 40B of the

Act.

6 Both the questions referred to us are therefore answered in the negative i.e. in favour of the revenue and against the assessee.

7 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt